

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Government,

vs.

ROD BLAGOJEVICH,

Defendant.

No. 08 CR 888

Chicago, Illinois

June 16, 2011

9:43 o'clock a.m.

VOLUME 33  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES B. ZAGEL  
AND A JURY

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21  
22  
23  
24  
25

INDEX OF EXAMINATION

WITNESS PAGE

Question By the Jury..... 5626

EXHIBITS

.....

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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(The following proceedings were had in  
Chambers Room 2588 with Court and counsel:)

QUESTION BY THE JURY

THE COURT: We have two things to discuss,  
one which we will do in open court. There was a  
note from the jury.

1           what was the page?

2           COURT'S LAW CLERK: 28.

3           THE COURT: Page 28, the third element, the  
4 one that says "representations, promises,"  
5 blah-blah-blah. They want guidance. It's not clear  
6 what kind of guidance they want. Maybe they're  
7 concerned about the word other side "material,"  
8 maybe they're concerned about the fact that we use a  
9 lot of words for the same thing. So we will discuss  
10 that. And I expect that shortly thereafter, you'll  
11 want some time to look up a little law. This is the  
12 question, I'll read it out loud, I will do the same  
13 thing outside:

14           "The jury would like clarification on the  
15 third proposition page 28 of the jury  
16 instructions ..."

17           that's all they said.

18           The second reason you are here is something  
19 which we are doing in chambers and something that  
20 will result in the entry of an order.

21           The government gave me notification about  
22 something that was done on WTTW and then sent me a  
23 disk, and someone else, my wife, saw something on  
24 ABC. I've looked at both of them. I got them on  
25 the web, I didn't see them when they were broadcast.

1 I also noticed when I was watching the CBS  
2 news this morning, the younger Sam Adam was  
3 advertising appearing on CBS news at 4:30.

4 I'm going to enter an order barring  
5 statements by any counsel for either party, and by  
6 any counsel that means anybody who has appeared in  
7 this case and has not been permitted to withdraw  
8 their appearance, I'm going to enter an order  
9 barring any public statement about the trial.

10 with respect to the thing in WTTW, what it  
11 began with was an assertion by the two counsel,  
12 Goldstein and Kaeseberg, saying that basically that  
13 they can't comment, and then they did, asserting  
14 that the defendant always spoke the truth and  
15 there's evidence out there that will prove him  
16 innocent. There's actually not too much in the way  
17 of single pieces of evidence that prove anybody  
18 innocent, there is evidence that tends to show  
19 innocence, and I think that that's what they meant.  
20 The only piece of evidence I have ever seen that  
21 proves somebody innocent was a surveillance camera  
22 of a homicide and the shooter was obviously not the  
23 defendant on trial.

24 The comments of the younger Sam Adam were  
25 less egregious, partly because it began with the

1 reporter saying "we want you to be objective" and he  
2 said he really couldn't be, but those comments were  
3 pretty temporary. They were basically comments  
4 about what he thought a jury might do.

:53AM 5 It is true that I regard this jury as  
6 exceptionally diligent and unlikely to watch  
7 anything or read anything. I thought their  
8 diligence was clearly manifested in second line of  
9 the note they sent yesterday in which they said that  
10 there were differences between the two transcripts,  
11 there were extra pages, and after pointing this out  
12 to me there was a separate line saying we have not  
13 read the extra pages, which means they instructed  
14 themselves that they shouldn't read the extra pages.

:54AM 15 The problem that concerns me with this,  
16 particularly if one is talking about what the jury  
17 might or might not do or comments about the jurors,  
18 and the younger Sam Adam did make a comment about  
19 his preference for women jurors, what jurors usually  
20 see, if they see anything at all, is some kind of  
21 tag line, something in the promotional thing,  
22 so-and-so will be here and then they know to turn it  
23 off. It's like seeing the headline in the  
24 newspaper, you don't read the story.

:54AM 25 I think, in my view, it increases the

1 temptation to the jurors because it's a promotion by  
2 the media that this is going to be about the jurors  
3 or the jury, and I think that's a temptation. But  
4 what is mainly wrong with it is not that it  
5 necessarily will contaminate the jury, it just adds  
6 an element of risk that after this expenditure of  
7 time and effort should not be tolerated.

8 I believe one of the defense counsel made a  
9 statement about the enormous cost of a retrial. The  
10 statement was inaccurate, but the truth is is  
11 retrials do cost. And if by some chance this rare,  
12 slightly increased risk results in something which  
13 requires further trial proceedings in this case,  
14 that's a cost that the government, which is pretty  
15 much bearing the entire cost here, the government  
16 should not be forced to pay.

17 So I am barring all public statements by all  
18 counsel until the verdict has been reached.

19 I have actually given some thought to the  
20 proposition that no comment should be allowed until  
21 a verdict has been returned on all counts, because  
22 it's possible we might have a verdict and there  
23 might be extra counts on which they couldn't reach a  
24 verdict, but I decided not to do that because should  
25 that occur again, the period of time which would



1 elapse between that and any further proceedings is  
2 likely to be long enough to dissipate concerns.

3           So I'm making as narrow a rule as I can, and  
4 the order expires roughly one minute after the  
5 verdict is read in court.

6           There are other grounds and other reasons for  
7 such orders and such restrictions, but in this  
8 particular high publicity case, I am mainly  
9 concerned with the risk I've just identified. There  
10 may also be issues of appropriate conduct under the  
11 various canons that govern lawyers' conduct, but it  
12 will be premature for me to make a judgment on that.  
13 So there is an absolute bar for whatever time it  
14 takes to reach a verdict.

15           It is also extremely important that this  
16 notice of this be given to all counsel who are still  
17 of record. My clerk has on several occasions  
18 attempted to reach the elder Sam Adam and the  
19 younger Sam Adam and has been unsuccessful in doing  
20 so, but he has informed them of what the nature of  
21 the order is. I would appreciate the assistance of  
22 defense counsel who are here in getting that message  
23 to them, because my other alternative is to have a  
24 written order and send a marshal out to find them.

25           MR. SOROSKY: We'll reach out to them.

1 THE COURT: Yeah.

2 MR. SOROSKY: I noticed -- or you said Sam  
3 Adam, Jr., was announced to be on a show this  
4 afternoon?

5 THE COURT: At 4:30.

6 MR. SOROSKY: Okay. So we'll try to get to  
7 him before 4:30.

8 THE COURT: Now, for all I know, this was  
9 taped, which creates a problem for me, but ....

10 MR. SOROSKY: They usually want the lawyers  
11 live, so it probably is not.

12 THE COURT: Yeah, I think it's probably not  
13 taped.

14 Now, another point I would like to make is,  
15 in my experience, lawyers go on television for one  
16 reason more than any other, and it's not to subvert  
17 the jury. They go on television because it's a form  
18 of lawyer advertising for which they don't have to  
19 pay. There is nothing wrong with lawyer

20 advertising, it is a perfectly legal thing to do,  
21 people can promote themselves all of the time. But  
22 the value of this lawyer advertising, which I don't  
23 doubt, I have been given numerous examples and heard  
24 a lot of informal chatter among lawyers, one in  
25 particular is a major litigator of civil cases had a

1 disastrous loss, lost many, many millions of dollars  
2 for a very large client and he thought that it would  
3 damage his career, and a year later he was making a  
4 pitch to a large corporation and he was very  
5 concerned, then somebody said weren't you in the  
6 so-and-so case, and he once told me his heart sank,  
7 and he said yes, I was, and the guy who questioned  
8 him said, hey, that was a big case, just you were in  
9 a big case, you must be a good lawyer. So that's an  
10 advantage for a lawyer in any high publicity case,  
11 but that advantage will exist after the verdict, as  
12 well as it does before the verdict.

13 And more importantly, in some cases, going on  
14 the air presents risks to the defense even if a jury  
15 does see it, because there remains the fact that  
16 some juror might see this, take a look at the  
17 lawyers for the defense and say I don't like them.  
18 There is no guarantee and not necessarily a  
19 probability that whatever influence the defense  
20 counsel have on a jury, if they do manage to see it,  
21 will favor their client. A juror might take one  
22 look at the younger Sam Adam and develop bad  
23 feelings about him because he's overweight or they  
24 don't like the way he talks or maybe they don't like  
25 somebody's last name, and it's the kind of stuff you

1 never hear about. The proposition that what a  
2 defense lawyer does on the air proclaiming innocence  
3 helps the client is one that ought to be critically  
4 examined by the lawyers who do it, and pretty much  
5 they never do. They never say, well, would somebody  
6 be offended by my saying this.

7           Interestingly enough, I think pretty much all  
8 lawyers do when they talk about talking in front of  
9 a jury. They think about, well, is what I'm going  
10 to say going to upset a juror. The same rule  
11 applies to televised appearances. And I don't know  
12 that anybody who did appear on television took a  
13 fairly rigorous analysis of whether this is going to  
14 help or hurt the client.

15           At the close of the WTTW thing that I saw,  
16 the interviewer said to the lawyers who appeared at  
17 that time, you know, why are you here, we asked the  
18 government, the government said they would never  
19 comment on a case before a verdict, and the response  
20 was we came because we were invited. Considering  
21 the gravity of the consequences of this case, I  
22 thought that was hard to flip into a response. What  
23 I'm saying here is not the order itself, it's my  
24 advise to counsel even in situations where  
25 television appearances are permitted, to exercise

1 some caution in doing so. My order eliminates the  
2 need to consider that caution because I'm saying no.

3 I will embody this in a written order which I  
4 will file under seal and you are free of course to  
5 seek mandamus from the Court of Appeals of the  
6 Seventh Circuit if anybody here does not like this  
7 ruling.

8 I would like to get some verification from  
9 Mr. Sorosky or one of the defense team that they  
10 have in fact notified the other lawyers.

11 MR. SOROSKY: We will do that and we will  
12 call you when we complete that.

13 THE COURT: That's fine.

14 MR. SOROSKY: Now, let me ask you one  
15 question because I'm sure it could come up when we  
16 speak to Sam Adam, Jr. if he has to cancel a  
17 previous arranged agreement, so to speak.

18 THE COURT: Yes. Right.

19 MR. SOROSKY: Is he --

20 THE COURT: He is free to say that there is a  
21 court order against it.

22 MR. SOROSKY: I just wanted to know.

23 THE COURT: Yes.

24 MR. SOROSKY: Do you want -- obviously the  
25 media is going to hound the people on the defense

1 side what went on back there.

2 THE COURT: Yes.

3 MR. SOROSKY: Can we tell them?

4 THE COURT: I order you not to tell them --

:06AM

5 MR. SOROSKY: Okay.

6 THE COURT: -- because what will happen if  
7 you did that --

8 MR. SOROSKY: We will not.

:06AM

9 THE COURT: Yeah, but there's a reason for  
10 it, it's not an arbitrary prohibition. The reason  
11 that is the case is, what is likely to happen is for  
12 those media who have already recorded this, they'll  
13 play it again, they'll play it again because they  
14 say, you know, we're prohibited by court order from  
15 doing this but we exclusively have young Sam Adam  
16 here on ABC and, you know, this must be significant  
17 because the court ordered it.

:06AM

18 MR. SOROSKY: well, if Sam Adam, Jr. relates  
19 to CBS that he can't be on because of the judge's  
20 order, then, I mean, that will go through the entire  
21 media like wild fire --

:06AM

22 THE COURT: The truth of the matter is is  
23 what he should simply do is to decline and offer no  
24 explanation. So that's my order now, because you  
25 have made a good point, Mr. Sorosky.

:07AM

1 MR. SOROSKY: Yeah. We'll go through that.

2 THE COURT: The other thing is is by chance  
3 the media will have something else to write about  
4 today, which is the question on the instruction.

5 So we're going to resume in open court  
6 shortly.

7 MS. KAESEBERG: Can we see the note? Because  
8 I want to make sure we have it right.

9 MR. SCHAR: Judge, is it possible for us to  
10 get a copy of page 28 or we can go back downstairs?

11 THE COURT: We'll copy it.

12 (The following proceedings were had out of  
13 the presence of the jury in open court:)

14 THE COURT: Counsel, approach the lectern.  
15 (Brief pause).

16 THE COURT: As I have informed counsel in  
17 chambers, we received an inquiry from the jury, the  
18 inquiry I will read it:

19  
20  
21 "... the jury would like clarification on  
22 the third proposition page 28 of the jury  
23 instructions."

24 To put this in context, I'll read the whole  
25 instruction:

1 ".... Counts 1 through 10 of the indictment  
2 charge the defendant with wire fraud. To  
3 sustain the charge of wire fraud as  
4 charged in Counts 1 through 10 the  
5 government must prove the following  
6 propositions beyond a reasonable doubt:

7 First, that the defendant knowingly devised  
8 or participated in a scheme to defraud the  
9 public of its rights to the honest  
10 services of Rod Blagojevich or John Harris  
11 by demanding, soliciting, seeking, asking  
12 for, or agreeing to accept a bribe in the  
13 manner described in the particular count  
14 you are considering;

15 Second, that the defendant did so with the  
16 intent to defraud;

17 Third, that the scheme to defraud involved  
18 a materially false and fraudulent  
19 pretense, representation, promise, or  
20 concealment;

21 And fourth, that for the purposes of  
22 carrying out the scheme or attempting to  
23 do so the defendant used or caused the use  
24 of interstate wire communications to take  
25 place in the manner charged in the



1 particular count you are considering."

2 This means that the jury has asked for  
3 clarification of the following words:

4 ".... that the scheme to defraud involved a  
5 materially false and fraudulent pretense,  
6 representation, promise, or concealment."

7 This, in my initial reading of it, presents  
8 two possible interpretations of what they want  
9 clarification of. Although, there are three basic  
10 concepts here, three basic categories of this  
11 instruction, the first one is "materially," the  
12 second one is "false and fraudulent," and the third  
13 group includes "presence, representation, promise,  
14 or concealment." I do not believe the jury could  
15 possibly be asking for definition clarification of  
16 false and fraudulent, what they might be asking for  
17 is "materially" on one hand and/or "pretense  
18 representation, promise, or concealment."

19 We have informed the jury, through the court  
20 security officer, that some time will pass before  
21 they receive a response to the inquiry, because you  
22 don't like them to be sitting there just waiting for  
23 this.

24 My belief is that this might require some  
25 level of research or thought before the sides make a

1 final decision as to what position they would take.  
2 If my assumption is untrue, you could tell me now.

3 MR. SCHAR: Judge, we discussed it and I  
4 think the issue is difficult to know precisely what  
5 it is that they want clarification on, which we have  
6 several different options. One is to provide  
7 clarification on a variety of different things, and  
8 the other is there is some clarification within the  
9 instructions --

10 THE COURT: There is.

11 MR. SCHAR: -- generally, as they continue to  
12 read on. I'm assuming they have done that, but  
13 maybe they have not.

14 I think it was our initial reaction, unless  
15 Your Honor thinks we should be approaching it  
16 differently, to indicate that they should re-read  
17 the instructions and then if they continue to have  
18 questions, provide a little more specific  
19 information as to precisely what they want  
20 clarification on so the issue can be narrowed and I  
21 think a more precise can be provided, which I'm not  
22 sure what we can possibly do at this point.

23 MR. GOLDSTEIN: We agree, Your Honor.

24 THE COURT: which leads to the next question.  
25 We have a form, a jury inquiry form, we also have a

1 response to the jury form, both of these forms do  
2 not have any little number authorizing it from the  
3 general printing office, we make this up all by  
4 ourselves, and this one says "response to jury." I  
5 have on occasion filled in "responses to jury" by  
6 asking a question of them, which may actually be  
7 helpful for me to present to them what it is that  
8 they want clarification on. In other words, the  
9 court would like to know if you can, tell us, which,  
10 if any, of the following terms do you want clarified  
11 or whether you want all of them clarified. I think  
12 maybe that might advance us a little further.

13 The defense express a view?

14 MS. KAESEBERG: Our preference would just be  
15 that before asking that question, as Mr. Schar said,  
16 send a statement saying something to the effect of  
17 you can continue to read the instructions and if you  
18 need further clarification then pose a question. I  
19 think as it stands we rather have them just read --  
20 because there is clarification within the  
21 instructions, but if they haven't gotten to that  
22 happen point yet we'd like them to get there first.

23 MR. SCHAR: Judge, I think it ought to be, at  
24 a minimum, two-fold, I don't think it should just be  
25 to continue to read the instructions.

1 THE COURT: I almost never give a  
2 continue-to-read instructions alone because there's  
3 a subtext there which would begin if you -- the one  
4 with the subtext is the real text is "you idiots,  
5 continue to read this."

:23AM

6 MS. KAESEBERG: I did mean twofold, if I  
7 wasn't clear, I meant before you pose the question  
8 tell them to do that first.

9 MR. SCHAR: I think it could be done in a way  
10 such as: If after reading all the instructions you  
11 still need clarification, please provide some  
12 indication, something like that.

:24AM

13 More specificity as to which part of the  
14 third line you need clarification on.

15 (Brief pause)

:25AM

16 THE COURT: When you refer to the fact that  
17 there are definitions in there, the only one I see  
18 that is--and it's here--that is traditionally a  
19 specific definition is the definition of  
20 materiality. So my guess, and it's only a guess, I  
21 could be wrong, is "presence, representation,  
22 promise or concealment" that's at issue here.

:26AM

23 (Brief pause)

24 THE COURT: Okay, this is my first draft in  
25 which I try to avoid the implied insult:

:30AM

1 "I ask you to take another look at the  
2 relevant instructions and after you've  
3 done so I ask you to specify --" "... I  
4 ask you to state which specific words or  
5 phrases in the third proposition that you  
6 believe you need clarification."

7 I'll read it again:

8 ".... I ask you to take another look at the  
9 relevant instructions and after you have  
10 done so I ask you to state which specific  
11 words or phrases in the third proposition  
12 you believe need clarification."

13 MR. SOROSKY: After the afraid "after you've  
14 done so," could we put in the phrase "if you so  
15 need"? Because your instruction somewhat implies  
16 they should ask for something, but, you know, maybe  
17 perhaps they may feel after looking at the  
18 instructions they may not need to come back to the  
19 Court.

20 MR. SCHAR: That's fine, Judge. "If  
21 necessary."

22 THE COURT: Yeah. Okay, now we are at this  
23 one:

24 "I ask you to take another look at the  
25 relevant instructions, if necessary, I ask

1       you to state which specific words or  
2       phrases in the third proposition you  
3       believe need clarification on."

4           MR. GOLDSTEIN: I think it was "take another  
5       look at at the relevant instructions and if  
6       necessary after you do so could you state what it  
7       was." I mean what --

8           THE COURT: You want me to repeat this again?

9           MR. GOLDSTEIN: Yeah, maybe I misheard it.

10          THE COURT: Okay. Actually, "maybe if  
11       necessary" is ....

12       (Brief pause)

13          THE COURT: It's now two sentences:  
14       "... I ask you to take another look at the  
15       relevant instructions if you believe this  
16       would be helpful. I ask you to state  
17       which specific words or phrases in the  
18       third proposition you believe need  
19       clarification."

20          Let me say it again just so everybody's got  
21       it --

22          MR. SCHAR: I think the issue is slightly  
23       flipped --

24          THE COURT: Yeah, it is flipped.

25          MR. SCHAR: -- in the sense that I assume you

1 are going to ask them to go back and look at the  
2 instructions and if after looking at the  
3 instructions it's still necessary that they need  
4 clarification, that I think is the issue.

:33AM

5 THE COURT: Is that okay with you?

6 MR. GOLDSTEIN: Sure.

7 MR. SOROSKY: Sure. Sure. Absolutely.  
8 Because -- right.

9 THE COURT: Say that again, Mr. Schar.

:33AM

10 MR. SCHAR: Judge, I think it would be your  
11 first sentence ending with a period after  
12 instructions, I ask you to go back and look at the  
13 relevant instructions, period, and then -- I can't  
14 remember exactly -- --

:34AM

15 MS. KAESEBERG: "After you've done --"

16 (Court reporter reading:)

17 MR. SCHAR: "If after doing so ...."

18 MS. KAESEBERG: I think it's "after you've  
19 done so, if necessary, I ask you to state the  
20 specific words."

:34AM

21 THE COURT: Okay, so we are abandoning  
22 Mr. Sorosky's thing which tells them you can decide  
23 whether or not you want to take a another look at  
24 the instruction.

:34AM

25 MR. SOROSKY: I think it's in accord.

1 MS. KAESEBERG: It's the same thing.

2 THE COURT: It's fine. I mean --

3 MR. SCHAR: If you would just read the second  
4 sentence.

:34AM

5 THE COURT: Okay, try it with me again:  
6 ".... after you have done so, if you think  
7 it is necessary, I ask you to state which  
8 specific words or phrases in the third  
9 proposition you believe you need  
10 clarification."

:35AM

11 I'll say it again --

12 MR. SOROSKY: Before you state it, let me  
13 throw out one other suggestion.

14 THE COURT: Sure.

:35AM

15 MR. SOROSKY: Instead of relevance, instead  
16 of "relevant instructions" you might want to use the  
17 phrase "instructions you have already received,"  
18 because I think by "relevance" we mean the  
19 instructions they have already received but may not  
20 hit home to the jury.

:35AM

21 MR. SCHAR: Okay, I'm assuming what you want  
22 to do, you're trying to guide them to the  
23 instruction that deal with wire fraud as opposed to  
24 all of the instructions.

:35AM

25 THE COURT: Right.



1 MR. SCHAR: So I think "relevant" makes sense  
2 to me.

3 THE COURT: I think so, too. If this weren't  
4 an element of one specific offense and not elements  
5 of others.

6 So the final version thus far unless somebody  
7 has another suggestion:

8 "... I ask you to take another look at the  
9 relevant instructions. After you have  
10 done so, if you think it is unnecessary, I  
11 ask you to state which specific words or  
12 phrases in the third proposition you  
13 believe need clarification."

14 MR. SCHAR: That's fine, Judge.

15 MR. SOROSKY: Yes.

16 THE COURT: Okay, that's what we'll send  
17 them. Don't go far.

18 Actually, my suggestion is is that you go to  
19 some nearby library or computer and start  
20 researching on what you believe might be the  
21 possible request.

22 MR. SOROSKY: Is the jury going to go to  
23 lunch now?

24 THE COURT: I don't know. No, the thing is  
25 that, and I've told the jury this, that once they

1 get the case, they no longer do what I tell them to  
2 do at the time I tell them to do it. These are  
3 decisions that are theirs. And they vary from day  
4 to day. So I don't know. They could very well be  
5 at lunch now. They're in charge.

6 MR. SCHAR: Thank you, Judge.

7 MR. SOROSKY: Thank you.

8

9 (Adjournment taken 11:37 o'clock a.m.)

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\* \* \* \* \*

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24

25 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT

:37AM

1 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
2 MATTER  
3  
4

5 /s/Blanca I. Lara

date

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